

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

MEGABUS USA, LLC

Employer

and

Case: 13-RC-144661

**UNITED WORKERS OF AMERICA
LOCAL 322**

Petitioner

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 777**

Intervenor¹

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“the Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.

Upon the entire record in this proceeding, I find:

1. The hearing officer’s rulings, made at the hearing, are free from prejudicial error and are affirmed.
2. The parties stipulated and I find that MegaBus USA, LLC (“the Employer”) is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.²

¹ The parties’ names appear as amended at hearing.

² The Employer is engaged in the business of low cost, point-to-point motor coach transportation services between cities in the Midwestern United States. During the past calendar year, a representative period, the Employer purchased and received at its Chicago, Illinois facility, goods, products and materials valued in excess of \$50,000 directly from points located outside the State of Illinois.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.
4. The Intervenor is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.
5. The Petitioner claims to represent the employees in the unit described in the Petition and the Employer declines to recognize the Petitioner.
6. The parties stipulated that there is no contract bar to this proceeding.
7. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.
8. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

I. ISSUES

There were no litigable issues presented at the hearing.³

II. DECISION

IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit⁴:

Included:

All full-time and regular part-time motor coach drivers employed by the Employer at its facility currently located at 4400 Racine Avenue, Chicago, Illinois.

Excluded:

All tour/trolley bus drivers, dispatchers, mechanics, technicians, bus washers, bus loaders, office clerical employees and guards, professional employees and supervisors, as defined in the Act.

There are approximately 144 employees in the appropriate unit.

³ At the hearing, the parties presented their positions on whether a mail ballot was appropriate in this case. The mode of an election is an administrative decision to be made by the Regional Director and not litigable. See *CEVA Logistics U.S., Inc.*, 357 NLRB No. 60, slip op. at 2 (2011) and Sec. 11301.2 of the NLRB Case handling Manual (Part Two) Representation Proceedings.

⁴ As stipulated at hearing.

III. CONCLUSION

Based on the foregoing and the entire record herein, I find that it is appropriate to conduct an election in the unit set forth above.⁵

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective-bargaining by United Workers of America Local 322; International Brotherhood of Teamsters Local 777 or neither. The mode, date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

⁵ At hearing the parties waived the filing of post-hearing briefs in this matter.

(overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **February 19, 2015**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlrb.gov,⁶ by mail, or by facsimile transmission at 312-886-1341. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **February 26, 2015**.

DATED at Chicago, Illinois this 12th day of February 2015.

/s/ *Peter Sung Ohr*
Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
209 South La Salle Street, Suite 900
Chicago, Illinois 60604-1443

⁶ To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.